



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9803-8]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended ("CAA"), notice is hereby given of a proposed consent decree, to resolve a lawsuit filed by Clean Air Council in the United States District Court for the District of Columbia: Clean Air Council v. Jackson, No. 1:12-cv-00707 (D. D.C.). On May 2, 2012, Plaintiff filed a complaint alleging that EPA failed to promulgate a Federal Implementation Plan ("FIP") as mandated by the CAA, addressing certain nonattainment planning provisions for the 1997 fine particulate matter National Ambient Air Quality Standard ("NAAQS") in the Commonwealth of Pennsylvania ("Pennsylvania"). The complaint also alleges that EPA failed to make a determination regarding whether the Liberty-Clairton nonattainment area in Pennsylvania ("Liberty-Clairton Area") has attained the 1997 fine particulate matter NAAQS by the applicable attainment date as mandated by the CAA,. The proposed consent decree establishes deadlines for EPA to take action.

**DATES:** Written comments on the proposed consent decree must be received by [insert date 30 days after publication date].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2013-0234, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301

Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** David Orlin, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-1222; fax number (202) 564-5601; email address: orlin.david@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The proposed consent decree would resolve a lawsuit filed by the Clean Air Council seeking to compel the Agency to satisfy certain mandatory duties under the Clean Air Act. Specifically the consent decree provides for EPA to promulgate a FIP by December 15, 2013, for the Liberty-Clairton Area including the following elements: an attainment demonstration, emission inventory, reasonably available control measures/reasonably available control technology (“RACM/RACT”), reasonable further progress (“RFP”), and contingency measures for the 1997 fine particulate matter annual NAAQS under CAA section 110(c)(1)(A), 42 U.S.C. 7410(c)(1)(A). However, pursuant to CAA section 110(k)(3), 42 U.S.C. 7410(k)(3), should EPA approve a state implementation plan for the Liberty-Clairton Area to attain the 1997 fine particulate matter annual NAAQS for any of the elements listed above, EPA’s obligation to promulgate a federal implementation plan for that element is void. In addition, should

EPA make a determination that the Liberty Clairton Area has attained the 1997 fine particulate matter annual NAAQS prior to December 15, 2013 and has not revoked that determination by December 15, 2013, the obligation to promulgate a FIP for an attainment demonstration, reasonably available control measures/reasonably available control technology (“RACM/RACT”), reasonable further progress (“RFP”), and contingency measures is void. The proposed consent decree also provides for EPA to make a determination by December 15, 2013, as to whether the Liberty-Clairton Area attained the 1997 fine particulate matter annual NAAQS by the applicable attainment date, unless as of December 15, 2013, EPA has signed a final notice extending the attainment deadline for the 1997 fine particulate matter annual NAAQS for the Liberty-Clairton Area to a date after April 5, 2010.

Under the proposed consent decree, within 15 business days following signature of each final action described in the proposed consent decree, EPA shall deliver the notice to the Office of the Federal Register for review and publication in the Federal Register. After EPA fulfills its obligations under the consent decree, the consent decree provides that this case shall be dismissed with prejudice.

The proposed consent decree also states that the consent decree can be modified by the parties, or by the court following a motion by a party and a response thereto. In addition, the parties agree to seek to resolve informally Clean Air Council’s claim for litigation costs pursuant to 42 U.S.C. 7604(d), but the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the

Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree?*

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC- 2013-0234) contains a copy of the proposed consent decree (including Attachment A). The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA’s electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period.

Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA

cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: April 8, 2013.

Lorie J. Schmidt,  
Associate General Counsel.

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